D.B. CIVIL SPECIAL APPEAL NO.73/2007

Raghuvir
Vs.
State of Rajasthan & Anr.

Date of Order :: 26.4.2007

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri N.K. Maloo for the appellant.

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This special appeal is directed against the order of the learned Single Judge dated 19.1.2006 in S.B. Civil Writ Petition no.6587/2003 dismissing the writ petition of the appellant.

The appellant had filed the writ petition for quashing the selections on the post of Head Master in secondary schools pursuant to Notification no.6/2001-2002, and direction to consider his case for appointment on the post in the category of Ex-Army Personnel. The case of the appellant is that in terms of the Rajasthan Civil Services (Absorption of Ex-Servicemen) Rules 1988, 12.5% posts are to be reserved for ex-servicemen but the impugned advertisement did not provide for such reservation, and therefore the entire selection was bad. The submission in the facts of the case is totally misconceived.

It is the admitted position that the appellant participated in the selection process - apparently in the general category - but failed to make grade. Having taken chance of success, he can not turn around and question the advertisement itself. It was open to the appellant to challenge the advertisement at the appropriate stage on the ground that it did not provide for reservation for the ex-servicemen. Having not done so, at a later stage he cannot challenge the selection process on that ground.

Counsel placed reliance on Malik Mazhar Sultan Vs. U.P. Public Service Commission, (2006) 9 SCC 507. The dispute therein related to recruitment to the Uttar Pradesh Judicial Service. In terms of the relevant rule, the candidate aged between 22-35 years as “on the first day of July next following the next year in which the notification for holding the examination by the Commission inviting applications, is published” is eligible to appear at the examination. The second proviso of the rule lays down that where the candidate was eligible in age to appear at the examination in any year of recruitment in which no such examination was held, “he shall be deemed to be eligible in age to appear in the next following examination”. In the case in hand the process of selection was initiated on 23.11.2002. The point for consideration was whether the year of recruitment would be 1.7.2002 to 30.6.2003 and eligibility as

regards the age would be reckoned as on 1.7.2002. The Court held that examination having not been held in the year 1.7.2002 to 30.6.2003, the candidates would be entitled to the benefit of the second proviso to rule 10. The dispute, it would thus appear, related to eligibility and the decision has no bearing on the present case.

Counsel also referred to the decision of the Supreme Court in K.K. Parmar Vs. H.C. of Gujarat, (2006) 5 SCC 789. That was a case of promotion on the post of Section Officers in the Gujarat High Court. As per the rule, selection was to be made on the basis of merit and for determining merit, past performance was one of the factors to be taken into consideration. However while marks were allotted for written examination and viva-voce, no marks were alloted for past performance. It was held that High Court/Selection Committee could not ignore the past performance. This decision too, it would appear, has no relevance to the dispute involved in the instant case.

In the facts and circumstances, we find no error in the order of the learned Single Judge dismissing the writ petition of the appellant.

The appeal is dismissed.

[MOHAMMAD RAFIQ],J. **[S.N.JHA],CJ.**

Skant/-